everything. Counsel for the respondents did not complain about any failure on the part of the claimants to comply with the second order. That being the position of the claimants, I did not understand the purpose of this application except perhaps to assuage the claimants that any general compliance with the said orders would constitute full compliance thereof.

I was also unable to see how the second order was 'ultra vires' O 24 r 17. The second order was made under that Rule to enforce the first order which was then valid and enforceable in accordance with its terms.

For the above reasons, I found that no sufficient cause had been shown to revoke or vary the first order or the second order.

Application dismissed.

Solicitors: *Donaldson & Burkinshaw; May Oh & Wee.*

Reported by *Terence Tan Bian Chye*

Cosmic Insurance Corp Ltd v Hup Chuan Guan Trading Co & Anor

HIGH COURT (SINGAPORE) — ORIGINATING MOTION NO 123 OF 1989
CHAN SEK KEONG J
20 OCTOBER 1990

Insurance — Duty of insured — Whether insured had failed to maintain vehicle in efficient condition

The appellants were insurers of the respondents' motor vehicle against third party claims. The second respondent was involved in a traffic accident while driving this vehicle. A summons was then issued against the second respondent. After this, the respondents informed the appellants of the accident, but were advised to seek independent legal representation in view of the fact that the appellants might later repudiate liability under the insurance contract. The respondents decided to plead guilty and were convicted of two traffic offences, including one of driving a vehicle when it had a bald tyre. This was followed by a suit against the respondents by the parties suffering loss in the traffic accident, which the respondents lost. They accordingly claimed an indemnity from the appellants. When the appellant repudiated liability on the grounds that the respondents' vehicle had a bald tyre, the dispute was referred to arbitration, which was then decided in favour of the respondents. The appellants appealed against this decision on the ground that the arbitrator's decision was wrong in law.

Held, dismissing the appeal:

(1) The arbitrator had made a finding of fact that the respondent's vehicle did not have a bald tyre. The appellant's repudiation was thus unlawful.

(2) (Obiter) The appellant could have repudiated liability on the ground that the respondents by pleading guilty to the traffic offences had made an admission in breach of the contract of insurance, but this issue was not before the arbitrator so there could be no appeal on this ground.

Cases referred to

1 *SIMU Mutual Insurance Association* v *Minson's Ltd* [1938] NZLR 829 (refd)
2 *Lickliss* v *Milestone Motor Policies at Lloyds* [1966] 2 All ER 972 (refd)
3 *Terry* v *Trafalgar Insurance Co Ltd* [1970] 1 Lloyd's Rep 524 (refd)

Legislation referred to

Road Traffic Act (Cap 276, 1985 Ed) s 26(1)
Motor Vehicles (C&U) Rules 1974 r 92(1)(f)

Ong Pang Meng for the appellants.
Paul Lee for the respondents.

Cur Adv Vult

Chan Sek Keong J: This is an appeal by the insurers against the award of an arbitrator. The insurers had issued a commercial vehicle policy covering the insured against claims by third parties for loss and damage arising from accidents caused by the insured's vehicle, a motor tipper.

On 16 August 1984, the second respondent whilst driving the said vehicle was involved in an accident with a motor bus at a major road junction. The accident occurred on account of the second respondent trying to cross the junction against the traffic light.

After the accident, the first and second respondents notified the insurers of the accident. When a summons was issued against the second respondent, they also went to see the appellants' representative with the summons. The representative advised them to engage their own lawyers to defend the charges as the appellants were not prepared to assist. The reason for the refusal is stated in a letter dated 26 December 1984 from the appellants to the first respondent. The letter read:

> We refer to the captioned accident and wish to point out that one of the police charges against your driver is in respect of one of the tyres of your lorry being bald at the material time of accident and if he is convicted of this charge, this would constitute a breach of the policy condition entitling us to repudiate liability. It would therefore be in your interest to defend the said charge on your own account if you wish to.

The respondents understood the insurers to have washed their hands off the matter, as a result of which the second respondent pleaded guilty on 24 July 1985 to two charges for traffic offences, one for dangerous driving under s 26(1) of the Road Traffic Act (Cap 276, 1985 Ed) and the other for driving the vehicle when it had a bald tyre under r 92(1)(f) of the Motor Vehicles (C & U) Rules 1974.

The next event that happened was the institution of a claim for damages against the respondents by an

injured passenger and also the owners of the bus. The respondents again notified the insurers of these proceedings and on this occasion the insurers' solicitors wrote to the first respondent on 21 April 1986 as follows:

> Due to the police charge against you for driving your vehicle with bald tyres which constitutes a breach of policy condition on your part, we hereby give you notice on behalf of our clients that they are repudiating liability under the said policy.

In view of this letter, the respondents then engaged solicitors to defend the civil claim, but after a full trial the court found against the respondents, and ordered them to pay damages and costs. The respondents then made a claim against the insurers for indemnity under the policy. The matter was referred to arbitration, at which the insurers relied on the following defences that the respondents:

(a) failed to maintain the said vehicle in efficient condition. The rear offside outer layer was bald at the time of the collision;
(b) failed to notify or forward to the respondents the writ of summons or process of Singapore Bus Service (1978) Ltd;
(c) failed to notify the respondents of the offer of composition made to the second claimant;
(d) accepted the offer of composition/pleaded guilty to dangerous driving without the written consent of the respondents.

The arbitrator, in his award, found that there was no merit in grounds (b) and (c) and also that they had not been pursued before him. He also found that there was no merit in (d) as the appellants, having informed the respondents that they were not prepared to assist, had no basis for complaint. Earlier on in his grounds of award, the arbitrator had found that the conduct of the appellants coupled with their letter of 26 December 1984 amounted to a repudiation.

The arbitrator gave detailed consideration to ground (a) and, on the evidence, came to the conclusion that the first respondent had not breached condition 3 of the policy (which required the insured to maintain the vehicle in 'efficient condition').

The appeal before me was limited to the arbitrator's finding in respect of ground (d). It was contended that the arbitrator was wrong in law in holding the appellants were not entitled to rely on condition 5 of the policy in relation to ground (d). Condition 5 read as follows:

> No admission, offer promise or payments shall be made by or on behalf of the Insured without the written consent of the Corporation which shall be entitled if it so desires to take over and conduct in his name the defence or settlement of any claim ...

It was contended that on a plain reading of condition 5 the written consent of the appellants was required before the second respondent should plead guilty to the road traffic charges and that the fact that the appellants had refused to assist in defending the charges did not absolve the respondents from obtaining such consent. It was contended on behalf of the appellants that their letter of 21 April 1986 did not waive the requirement of consent but was merely an indication of the appellants' intention to repudiate.

The appellants further contended that the plea of guilty amounted to an admission in breach of condition 5. Counsel for the respondents contended that the expression 'admission' in condition 5 meant admission of liability and that the plea of guilty did not amount to an admission of liability. He cited *SIMU Mutual Insurance Association v Minson's Ltd.*[1]

It is not necessary for me to decide whether the plea of guilty amounted to an admission in terms of condition 5, as, in my view, this was not an issue before the arbitrator. It was an issue which was outside his terms of reference. The issue that was put before the arbitrator was whether the first respondents had an obligation to seek the appellants' written consent before the second respondent could plead guilty to the charges. The arbitrator held that there was no such obligation as the appellants had repudiated liability at the said meeting and as confirmed by their letter of 21 April 1986.

The question before me was therefore whether the arbitrator's decision was right. The arbitrator found that there was a repudiation by the appellants as evidenced by their letter of 21 April 1986 which set out accurately what had transpired at the meeting between the parties. In my view, the arbitrator's finding on this point was wrong as on a plain construction of the letter, it did not amount to a repudiation of the policy. The letter was merely an indication to the respondents that the appellants would be entitled to repudiate if the second respondent were found guilty of driving the bus with a bald tyre. Under the terms of the policy, the appellants had no obligation to provide any legal assistance to the respondents to defend the charges against the second respondent, and their refusal to do so was not a breach of the terms of the policy and was also therefore not a repudiation on this ground.

But, if the respondents had no right to demand that the appellants defend them against the criminal charges, the appellants also had no right to require the respondents to seek their consent to a plea of guilty, unless the respondents were subject to such a contractual condition. The respondents' counsel has contended that such a condition, if it existed, would be against public policy, citing *Lickliss* v *Milestone Motor Policies at Lloyds*[2] and *Terry* v *Trafalgar Insurance Co Ltd.*[3] But I do not need to consider whether a condition in this form would be against public policy because there was no such condi-

tion in the policy. What condition 5 conferred on the appellants was an option to 'take over and conduct ... the defence or settlement or any claim or to prosecute ... for its own benefit any claim for indemnity or damages or otherwise ...'. These words plainly referred to civil claims and had nothing to do with criminal charges. Accordingly, this part of condition 5 did not affect the plea of guilty at all. In any case, even if this part of condition 5 were applicable, the appellants, having refused to take over the defence of these criminal charges, could not complain about the second respondent dealing with the charges in the way he had done, especially in circumstances where he knew he had no defence whatever.

What the appellants could legitimately have complained of was that the plea of guilty amounted to an admission under condition 5. But this issue was not before the arbitrator and therefore there could be no appeal on it. In any event, I might observe that when the appellants subsequently repudiated the policy on 21 April 1986, they did so not on the ground of an admission but on the ground of a breach of a road traffic regulation governing the condition of tyres when used in a motor vehicle. The said offence was one of strict liability and the plea of guilty in no way implied any negligence on the part of the second respondent. As far as this ground was concerned, the arbitrator had made a finding of fact that the condition of the tyre was such that it did not breach condition 3. This finding was not appealed against in this appeal. The arbitrator's finding meant that the repudiation by the appellants was wrongful. Accordingly, the appellants had no defence to the respondents' claim for indemnity under the policy. For the above reasons, the appeal was dismissed with costs.

Appeal dismissed.

Solicitors: *Tang & Partners*; *Fam Tay & Lee.*

Reported by *Terence Tan Bian Chye*

Tang Tuck Wah v Public Prosecutor

HIGH COURT (SINGAPORE) — MAGISTRATE'S APPEAL NO 536 OF 1986
SINNATHURAY J
1 APRIL 1990

Criminal Law — Breach of trust — Dishonest intent — Penal Code (Cap 224, 1985 Ed), s 408

Criminal Procedure — Statements — Admissibility — Recorded by CPIB investigator — Criminal Procedure Code (Cap 68, 1985 Ed), s 122 — Prevention of Corruption Act (Cap 241, 1985 Ed), s 26

Evidence — Statements — Admissibility of statement recorded by CPIB investigator — Whether caution under s 26 of Prevention of Corruption Act can amount to threat or inducement — Accused bound to tell the truth — Principles to be applied

Evidence — Mixed statements — Court may reject exculpatory portions of statement

The appellant was initially investigated by the CPIB on a suspicion of corruption. He was eventually charged with breach of trust. He was tried and convicted in the district court, and appealed against his conviction. Among his grounds the appellant stressed that the statement recorded by the CPIB investigator should not have been admitted in evidence at trial.

Held, dismissing the appeal:

(1) The investigative powers of CPIB officers are not restricted to the investigation of corruption offences. They can investigate any seizable offence under any written law which comes to light in the course of their investigations under the Prevention of Corruption Act (Cap 241, 1985 Ed) ('PCA'). In so far as offences under the Penal Code are concerned, their investigations are deemed to be police investigations and s 122 of the Criminal Procedure Code (Cap 68, 1985 Ed) ('CP') applies in the same manner and to the same extent as if the CPIB officers are police officers. It follows, therefore, that the test to be applied in determining the admissibility or otherwise of a statement given under s 26 of the PCA is the test of voluntariness in that the making of the statement was not caused by any inducement, threat or promise.

(2) The mere fact that s 26 of the PCA was brought to the attention of the appellant by showing it to him, cannot import a threat or inducement rendering the appellant's statement inadmissible. If a person is legally bound to give information it meant that there was an obligation under the law to tell the truth and the performance of that obligation alone could not be equated to a threat.

(3) The mere fact that the proviso to s 16 of the PCA does not specify a police rank for a CPIB officer does not make a statement recorded by a CPIB officer inadmissible under s 122(5) of the CPC.

(4) The appellant's statement which he voluntarily gave incriminated him. Although the statement contained exculpatory matters, it should be borne in mind that the incriminating parts were likely to be true whereas the excuses need not carry the same weight.

Cases referred to

1 *Haw Tua Tau* v *PP* [1981] 2 MLJ 49 (refd)
2 *Chye Ah San* v *R* [1954] MLJ 217 (refd)